

# Exhibit 3

# Akin Gump

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August 18, 2017

*Via E-Mail [FOIA.Public.Liaison@ssa.gov] and FedEx Tracking No. 7700 6340 2221*

Executive Director  
Office of Privacy and Disclosure  
Social Security Administration  
617 Altmeyer Building  
6401 Security Boulevard  
Baltimore, MD 21235

Re: Freedom of Information Appeal, Reference No. S9H: AR9240

Dear Sir or Madam:

We write to appeal the denial of the above-captioned request for records under the Freedom of Information Act ("FOIA"). This appeal is timely filed in accordance with Social Security Administration ("SSA") FOIA regulations at 20 C.F.R. § 402.200.

The FOIA request was submitted on behalf of more than 60 hospitals (the "Providers") for "all Supplemental Security Income Displays ('SSIDs'), current and stale (inactive or active), including the computation history field and payment history field." *See* Attachment 4. Those records were requested for 433 now-deceased Medicare beneficiaries and for specified periods when the beneficiaries were treated on an inpatient basis by one of the requesting Providers.

This request is virtually identical to a request submitted by another hospital (Baystate Medical Center) in 2003 for the exact same records with respect to certain living and deceased Medicare beneficiaries who had been treated by that hospital in past years. *See* Attachment 1. Both requests were made for the purpose of confirming the accuracy of the calculation of Medicare payments by the Centers for Medicare & Medicaid Services ("CMS"), based in part on its determination of a hospital's percentage of Medicare patient days attributable to individuals who were also entitled for the period of their inpatient hospital stay to federal benefits under the Supplemental Security Income ("SSI") program. The requested records for deceased beneficiaries were produced to Baystate in response to its nearly identical request, with redactions of information relating to other individuals (such as a spouse), and those records revealed a number of errors and omissions in CMS's calculation of the Medicare payment for disproportionate share hospitals. *See Baystate Med. Ctr. v. Leavitt*, 545 F. Supp. 2d 20, 25 (D.D.C. 2008) (the hospital "obtained disclosure of a sample of 627 individual-specific SSI



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eligibility records”). CMS thereafter revised its calculation process, *see* CMS Ruling 1498-R (Apr. 28, 2010); 75 Fed. Reg. 50,042, 50,276-86 (Aug. 16, 2010), and this request seeks the same SSID information to confirm the accuracy of the payment calculations CMS performed under its new method.

As in the *Baystate* case, the information requested here, from the computation history field and the payment history field, will confirm whether an individual Medicare beneficiary was eligible for SSI benefits during the period of his or her inpatient hospital stay and whether federal or state SSI benefits were paid for that period. *See* Attachment 2 (SSI Query Guide). The requested information is thus directly relevant and material to the Providers’ administrative proceedings currently pending before the Medicare Provider Reimbursement Review Board, in which CMS has a material interest and is a real party in interest.

By letter received on July 20, 2017 (Attachment 3), the agency’s Acting Freedom of Information Officer denied this request in full, asserting that the requested SSID information is exempt from disclosure under FOIA Exemptions 6 and 7(E). As discussed further below, neither of these disclosure exemptions applies. The denial must be reversed and the requested records must be released.

#### SSA Must Release All Reasonably Segregable Portions Of The Requested Records

The Freedom of Information Officer improperly invoked FOIA Exemption 6 as a basis for withholding all of the requested records for 433 deceased Medicare beneficiaries. As the FOIA Officer recognized, deceased persons do not have privacy interests under the FOIA or the Privacy Act.

The denial letter asserts that “SSIDs contain information about individuals living in the same household.” That may be so, but it is not a permissible basis for withholding the portions of the requested records that do not contain information about another individual. The FOIA requires the agency to redact any information that is covered by Exemption 6 and to disclose “[a]ny reasonably segregable portion of [the] record[s] . . . after the deletion of the portions which are exempt.” 5 U.S.C. § 552(b). The agency did just that in producing redacted copies of the records requested by Baystate Medical Center in its virtually identical request (Attachment 1).

In this case, the agency has neither released segregable portions of the SSI records requested nor offered any explanation of non-segregability as required. *See, e.g., Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002) (in order to show that all reasonably segregable material has been released, agencies must provide a “detailed justification” for its non-segregability).



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The Requested Records Were Not Compiled For Law Enforcement Purposes And  
Disclosure Poses No Risk Of Circumvention Of Any Law

The Freedom of Information Officer also erred in invoking FOIA Exemption 7(E) as a basis for withholding the requested SSID records. Exemption 7(E) applies only with respect to:

[R]ecords or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law

5 U.S.C. § 552(b)(7)(E).

Under SSA's FOIA regulations, the agency must "explain why the request was denied (for example, the reasons why the requested document is subject to one or more clearly described exemptions)." 20 C.F.R. § 402.195(b), *see also* SSA PROGRAM OPERATIONS MANUAL SYSTEM, GN 03350.0005.J.6, *available at* <http://policy.ssa.gov/poms.nsf/lnx/0203350005> (agency FOIA manual requiring that FOIA denial notices include "an explanation of how the exemption applies to the requested information"). The Freedom of Information Officer's denial does not explain how Exemption 7(E) applies to the requested SSID records, nor could it.

Exemption 7(E) is inapplicable to this request for SSI eligibility and payment records because SSA is not a law enforcement agency and the requested SSID records were not "compiled for law enforcement purposes." *See Elkins v. Fed. Aviation Admin.*, 99 F. Supp. 3d 90, 99 (D.D.C. 2015) (holding that in-flight communication and flight tracking records created and maintained by the FAA for a "general" administrative purpose were not compiled for a law enforcement purpose as required under Exemption 7 because the records "contain[ed] no information intended to assist law-enforcement personnel in maintaining 'order and safety'" and were not "*created* to help achieve any law enforcement purpose.") (emphasis in original, internal citation omitted); *see also Benavides v. Bureau of Prisons*, 774 F. Supp. 2d 141, 146-47 (D.D.C. 2011) (holding that agency's "blanket reference" to law enforcement purposes did not establish that requested records were compiled for such purposes under Exemption 7). SSA, like FAA, is not a law enforcement agency. And like the FAA records requested in *Elkins*, the SSI records requested here were created by SSA for a general administrative purpose—to track eligibility for and payment of SSI benefits—and not to assist law enforcement personnel to maintain order and safety or to detect and punish violations of the law.

Further even if the requested SSI eligibility records were compiled for law enforcement purposes (and they were not), an agency must show how the release of "the information might



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create a risk of circumvention of the law” in order to properly assert Exemption 7(E). *See Mayer Brown LLP v. Internal Revenue Serv.*, 562 F.3d 1190, 1194 (D.C. Cir. 2009) (internal citation omitted); *see also Blackwell v. Fed. Bureau of Investigation*, 646 F.3d 37, 42 (D.C. Cir. 2011) (agency must “demonstrate logically how the release of the requested information might create a risk of circumvention of the law.”) (internal citation omitted). SSA has not met, and cannot meet, that burden here.

Disclosure of the requested records reflecting eligibility for and payment of SSI benefits for specified periods in which individuals were treated by a hospital would not disclose techniques and procedures for law enforcement investigations or prosecutions. Nor would production of the requested eligibility and payment records disclose guidelines for law enforcement investigations or prosecutions, and in any event, production cannot reasonably be expected to present a risk of circumvention of the law.

This is why SSA produced exactly the same information requested by Baystate Medical Center in 2003. And, as discussed the memorandum accompanying this FOIA request (Attachment 4), SSA routinely discloses the same eligibility and payment information pursuant to a several established “routine uses.” Most pertinent here, SSA has an established routine use permitting the release of information from the Supplemental Security Income and Special Veterans Benefits Record to a federal agency tribunal (like the Provider Reimbursement Review Board), or a party before such tribunal (like the Providers), where “[t]he United States or any agency thereof . . . or any of its components is a party to litigation or has an interest in such litigation” and SSA determines that the tribunal’s use of the records is relevant and material to the litigation before it and is compatible with the purpose for which the records are collected. 65 Fed. Reg. 32,142, 32,144 (May 22, 2000). CMS has an interest in hospitals’ appeals before the Provider Reimbursement Review Board and the requested records are directly relevant to verifying the accuracy of CMS’s calculations of the Medicare disproportionate share hospital payments made to qualifying institutions under the Medicare program, the precise matter at issue in the appeals pending before the Provider Reimbursement Review Board. *See Baystate Med. Ctr.*, 545 F. Supp. 2d 20.

Thus, release of the SSI records requested would serve a strong public interest in confirming the accuracy of the Medicare payment calculations for hospitals that shoulder the financial burden of caring for a disproportionate share of low-income patients, including low-income Medicare beneficiaries who were entitled to federal SSI benefits. As in the *Baystate* case, 545 F. Supp. 2d 20, production of the requested records, as redacted to remove information concerning other still-living individuals, will “shed light” on a significant aspect of an important government program. In balancing this public interest in disclosure against privacy interests that can be addressed through redaction, it is clear here, as in the *Baystate* case, that the public

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interest and the hospitals' interest in confirming the accuracy of the CMS payment calculations compel disclosure.

For these reasons, along with the reasons set forth in our request and memorandum, the denial of the FOIA request should be overturned, and the requested records should be released.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Keough", with a long, sweeping horizontal stroke at the end.

Christopher L. Keough

Enclosures: Attachments 1 through 4.

# Attachment 1



**POWERS  
PYLES  
SUTTER &  
VERVILLE PC**  
ATTORNEYS AT LAW

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SENIOR PROJECT MANAGER  
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HIGHER EDUCATION SPECIALIST  
SHARON H. BOB, Ph.D.

Member Tennessee Bar Only

April 11, 2003

VIA FEDERAL EXPRESS

Mr. Darrell Blevins  
Social Security Administration  
Office of Disclosure Policy  
3-A-6 Operations Building  
6401 Security Boulevard  
Baltimore, MD 21235

Re: Expedited Freedom of Information Request

Dear Mr. Blevins:

On behalf of Baystate Medical Center ("BMC"), we are writing to request copies of records under the Freedom of Information Act ("FOIA"). We request that you produce copies of the records described below on an expedited basis, but in no event later than May 9, 2003.

The requested records relate to individuals whose social security numbers ("SSNs") are listed in the two Excel files on the enclosed diskette. The first, named Baystate - List of SSNs for Living.xls, contains a list of the social security number of each living individual who was a Medicare patient of BMC during its fiscal years ending 1993, 1994, 1995, and 1996.

The second file, named Baystate - List of SSNs for Deceased.xls, contains a list of the social security number of each deceased individual who was a Medicare patient of BMC during its fiscal years ending 1993, 1994, 1995, and 1996. Each of these deceased individuals is listed as such on the Social Security Administration ("SSA") Death Master File that we purchased from the U.S. Department of Commerce.

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For all of the individuals listed in both files, we request hard copies of all Supplemental Security Income Displays ("SSIDs"), current and stale (inactive or active), for the period beginning October 1, 1990 and ending September 30, 2002. Where multiple SSIDs exist for an individual, we request any or all of the SSIDs that include data pertaining to the above time period. To the extent that any SSID includes information on a living person, we would expect that information to be redacted.

For the reasons discussed in the attached memorandum, we believe it is clear that disclosure of the SSIDs for all of the individuals listed in the enclosed files, whether living or deceased, is both required by the FOIA and permitted by the Privacy Act. But, even if the SSID records of still-living patients were exempt from disclosure (which they are not), there is absolutely no question that the SSIDs of the now-deceased patients must be released.

Moreover, as outlined in detail in the attached memorandum, we have a compelling need for an expedited response to this request under the standard set forth at 20 C.F.R. § 402.140. The SSIDs requested above are relevant and material to administrative proceedings (Case Nos. 96-1822, 97-1579, 98-1827, 99-2061) involving BMC before the Department of Health and Human Services, Provider Reimbursement Review Board. An evidentiary hearing in these proceedings is scheduled to be conducted by the PRRB on April 29-30, 2003, and a full administrative hearing on the merits of those proceedings is scheduled for July 9-10, 2003. Further, the SSIDs are in the Social Security Administration's sole possession, custody and control. In short, our client, BMC, requires an expedited response to this request to secure important legal rights, benefits and remedies provided for under title XVIII of the Social Security Act.

We are prepared to pay the appropriate fees for the costs of your search for, and copying of, the records requested herein. Please let us know if you need payment of those fees in advance. In addition, if you will let us know when the records are available, we will

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arrange for their pick-up. Please contact Stephanie A. Webster at (202) 466-6550 with any information or questions regarding this request.

Sincerely,



Ronald N. Sutter  
Stephanie A. Webster  
Counsel for Baystate Medical Center

Christopher L. Keough  
Vinson & Elkins, LLP  
The Willard Office Building  
1455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-1008  
Co-Counsel for Baystate Medical Center

Attachments

Cc: Suzanne Cochran, Chairperson, PRRB  
Donald Romano, HHS OGC  
Terry Gouger, Mutual of Omaha

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Baystate Medical Center

Analysis of Applicable Standards for  
Disclosure of Requested Records

April 11, 2003

I. An Expedited Response Is Necessary

We have a compelling need for an expedited response to the accompanying request for records under the standard set forth at 20 C.F.R. § 402.140.

A. The Records Requested Are Relevant and Material to Pending Litigation Before A Federal Agency

The SSIDs requested in the accompanying letter are relevant and material to administrative proceedings (Case Nos. 96-1822, 97-1579, 98-1827, 99-2061) involving Baystate Medical Center ("BMC") before the Department of Health and Human Services, Provider Reimbursement Review Board ("PRRB" or "Board"). The dispute in those proceedings centers on the accuracy of a certain percentage, hereinafter referred to as the "Medicare/SSI percentage," that is calculated annually for BMC by the Centers for Medicare and Medicaid Services ("CMS"), formerly the Health Care Financing Administration ("HCFA"). The Medicare/SSI percentage determines the amount of the Medicare payment due BMC for the cost of treating a disproportionate share of low-income patients in each of the fiscal years at issue in the above-referenced proceedings before the PRRB. See 42 U.S.C. § 1395ww(d)(5)(F)(vi); 42 C.F.R. § 412.106(b). As defined by law, the Medicare/SSI percentage must reflect the proportion of BMC's total Medicare inpatient hospital days that are attributable to patients who, for such days, were also entitled to federal Supplemental Security Income ("SSI") benefits. See 42 U.S.C. § 1395ww(d)(5)(F)(vi)(I); 42 C.F.R. § 412.106(b)(1). Since 1986, CMS has computed BMC's Medicare/SSI percentage for each federal fiscal year based on SSI-eligibility data supplied by SSA.

BMC is challenging the accuracy of the Medicare/SSI percentages computed by CMS for each of the periods at issue in the above-referenced administrative proceedings. We believe that CMS understated BMC's Medicare/SSI percentages, and that the hospital has not been paid the full amount to which it is entitled by law.

B. The Records Requested Are Needed to Secure A Legal Right, Benefit or Remedy and Cannot Be Obtained Elsewhere

SSA's failure to produce the requested records on an expedited basis would deny our client, BMC, due process rights in connection with the above-referenced appeals under Section 1878 of the Act, and could effectively deprive BMC of its statutory entitlement to payment under 42 U.S.C. § 1395ww(d)(5)(F) for the costs of treating a disproportionate share of low-income patients. An evidentiary hearing in the above-

referenced proceedings is scheduled to be conducted by the PRRB on April 29-30, 2003, and a full administrative hearing on the merits of those proceedings is scheduled for July 9-10, 2003. Further, the SSIDs requested herein are the sole original-source data reflecting the federal SSI eligibility of the Medicare beneficiaries who were treated by BMC during the periods at issue in the above-referenced appeals, but who were not included in CMS' calculations of BMC's Medicare patient days attributable to patients who were, for such days, entitled to federal SSI benefits. Accordingly, because the SSIDs for these individuals are in SSA's sole possession, custody and control, our client, BMC, requires an expedited response to this request to secure important legal rights, benefits and remedies provided for under title XVIII of the Social Security Act (i.e., the Medicare program).

C. The Records Requested Are Readily Available and This Request May Be Easily Processed

The SSIDs requested above are readily available in SSA's electronic eligibility files. These electronic records are maintained centrally and can be accessed easily from SSA's central office. Further, we understand that SSA has software and programs available to permit batch-processing of this request on an automated basis (based on the social security numbers being furnished herewith). Therefore, we believe that a response to this request can be easily prepared from readily available electronic records with minimal burden or expense.

II. The Requested Records Are Not Exempt From Disclosure

SSA regulations provide for the disclosure of personal records, without consent, if "required by the FOIA" or "permitted by the Privacy Act." 20 C.F.R. § 401.100.<sup>1</sup> For the reasons discussed below, release of the records requested in the accompanying letter is both required by the FOIA and permitted by the Privacy Act.

A. FOIA Requires Disclosure

FOIA requires SSA to disclose information in its records unless one of several exemptions applies. 5 U.S.C. § 552; 20 C.F.R. § 401.130. Section 552(b) of the FOIA lists nine types of records that are exempt from mandatory disclosure. 5 U.S.C. § 552(b). Only one of those exemptions is potentially applicable here. That exemption covers "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). In determining whether a disclosure would constitute an unwarranted invasion of personal privacy, SSA must consider:

<sup>1</sup> The Privacy Act does not permit SSA to withhold information that it is required to disclose under FOIA. 5 U.S.C. § 552a(t)(2); *Crompton v. Stone*, 59 F.3d 1400, 1405 (D.C. Cir. 1995). However, in light of this regulatory language, we will address disclosure of records under both the FOIA and the Privacy Act.



- (a) The sensitivity of the information (*e.g.*, whether individuals would suffer harm or embarrassment as a result of the disclosure);
- (b) The public interest in the disclosure;
- (c) The public's interest in maintaining general standards of confidentiality of personal information; and
- (d) The existence of safeguards against unauthorized redisclosure or use.

20 C.F.R. § 401.140.

Viewed under the foregoing standards, the disclosure of the records requested herein would not be an unwarranted invasion of personal privacy for several reasons. First, the establishment of the routine uses discussed above clearly reflects SSA's determination that the public interest in disclosure of the types of SSI eligibility records requested here outweighs any potential for harm or embarrassment.

Second, the SSID records requested herein relate to individual Medicare patients of BMC during the periods at issue in pending appeals before the PRRB. To the extent that these persons are still living (and many, unfortunately, are not), the patients will suffer no harm or embarrassment from further release of the information sought here. The SSIDs requested herein merely provide a more accurate and complete listing of the same SSI eligibility data that already has been disclosed by SSA to CMS and by CMS to BMC, pursuant to the established routine uses discussed above.

Third, our client, BMC, intends to use this information only for purposes of verifying and proving to the PRRB the patients' eligibility for governmental SSI benefits, eligibility that impacts Medicare payments to the hospital for the costs of caring for a disproportionate share of low-income individuals. Release of the records will thus serve the public interest by furthering the proper administration of the Medicare program and ensuring the proper amount of Medicare payment to BMC for the cost of serving low-income patients.

Fourth, BMC is cognizant of the potentially sensitive nature of this information. The hospital and its representatives have taken confidentiality precautions with respect to the data that it already possesses,<sup>2</sup> and the hospital and its representatives certainly would agree to undertake the same precautions with the data produced by the SSA.

Finally, to the extent that any of the requested SSIDs include information about any person other than the individuals listed in the files on the enclosed diskette, then SSA may redact that data from the record produced in response to this request.

<sup>2</sup> BMC previously executed a data use and confidentiality agreement with CMS as to SSI eligibility data furnished to the hospital by CMS in connection with the pending appeals before the PRRB.

## B. Privacy Act Permits Disclosure

The Privacy Act and SSA's implementing regulations permit disclosures that are compatible with the purposes for which the information was collected. Permissible disclosures include those made under a routine use published in the Federal Register. 5 U.S.C. §§ 552a(a)(7), (b)(3), (e)(4); 20 C.F.R. §§ 401.25, 401.150.

SSA has published a routine use permitting the release of information from the Supplemental Security Income and Special Veterans Benefits Record 60-0103 to a federal agency tribunal (in this case the PRRB), or a party before such tribunal (BMC), where "[t]he United States or any agency thereof . . . or any of its components is a party to litigation or has an interest in such litigation" and SSA determines that the tribunal's use of the records is relevant and material to the litigation before it and is compatible with the purpose for which the records are collected. 65 Fed. Reg. 32142, 32144 (May 22, 2000).

This routine use allows for the release of the requested information to BMC's counsel in connection with the administrative proceedings pending before the PRRB. The PRRB is a component of the Department of Health and Human Services. As a party to those proceedings before the Board, BMC is challenging the accuracy of the Medicare/SSI percentages that were computed by CMS to determine BMC's disproportionate share hospital payments. CMS is a party-in-interest in those proceedings and clearly has a substantial interest in the appeals. Moreover, disclosure of the records requested here is necessary for the PRRB to verify CMS' processing of the accuracy of the data furnished to CMS by SSA in connection with CMS' determination of the disproportionate share hospital payments due BMC for the periods at issue in the pending appeals before it.<sup>3</sup>

In addition, SSA has already determined that disclosure of the records sought here is compatible with the purposes for which the information was collected.<sup>4</sup> SSA has published a routine use permitting the release of information from the same data record to "Federal, State or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the [Social Security] Act." 65 Fed. Reg. 32142 (May 22, 2000). Thus, since 1986, SSA has

<sup>3</sup> As discussed further below, CMS itself has determined that disclosure of the same type of information requested here is necessary in connection with appeals to the PRRB challenging the agency's determination of a hospital's entitlement to the disproportionate share hospital payment. 65 Fed. Reg. 50548, 50549 (Aug. 18, 2000) (allowing release of SSI eligibility information pursuant to a published "routine use").

<sup>4</sup> By definition, SSA or another federal agency must find a use of data to be compatible with the purposes for which it is collected in order to deem it a "routine use" and publish that use in the Federal Register as such. 5 U.S.C. §§ 552a(a)(7), (b)(3), (e)(4); 20 C.F.R. §§ 401.25, 401.150.



regularly released from the same data record SSI eligibility information, like that requested here, to CMS in connection with CMS' calculation of the Medicare/SSI percentages at issue in BMC's pending appeals before the PRRB. See 65 Fed. Reg. 50548 (Aug. 18, 2000).

Another established "routine use" also permits disclosure of SSI eligibility information to a hospital in the very circumstances extant here. 65 Fed. Reg. 50548, 50549 (Aug. 18, 2000). This routine use permits disclosure to "a hospital that has an appeal properly pending before the [PRRB], or before an intermediary, on the issue of whether it is entitled to disproportionate share hospital payments, or the amount of such payments." *Id.* "Disclosure under this routine use shall be for the purpose of assisting the hospital to verify or challenge [CMS's] determination of the hospital's SSI ratio (*i.e.*, the total number of Medicare days compared to the number of Medicare/SSI days)." *Id.*

Taken together, logic and common sense dictate that if SSA's release of the requested records to CMS is compatible with the purposes for which the information is stored (and established routine uses confirm that it is), and if CMS's release of that same information to a hospital in the context of an appeal before the PRRB is also compatible (and an established routine use confirms that it is), then it necessarily follows that SSA may disclose the same information directly to a hospital (in this case BMC) in connection with the hospital's appeals to the PRRB.

Moreover, as noted above, the Privacy Act does not permit SSA to withhold information that it is required to disclose under FOIA. 5 U.S.C. § 552a(t)(2); *Crumpton v. Stone*, 59 F.3d 1400, 1405 (D.C. Cir. 1995). And, for the reasons discussed above, it is clear that the SSIDs requested herein are not exempt from mandatory disclosure under FOIA.

C. The SSIDs of Deceased Individuals Are Not Protected or Exempt From Disclosure Under the Privacy Act or FOIA

For the reasons discussed above, we believe it is clear that disclosure of the SSIDs for all of the individuals listed on the enclosed schedule, whether living or deceased, is both required by the FOIA and permitted by the Privacy Act. But, even if the SSID records of still-living patients were exempt from disclosure (which they are not), there is absolutely no question that the SSIDs of the now-deceased patients must be released.

SSA regulations explicitly acknowledge that the disclosure of SSI eligibility records concerning deceased individuals is not a clearly unwarranted invasion of privacy and these records, therefore, are not exempt from mandatory disclosure under the FOIA. 20 C.F.R. § 401.190. Further, the regulations recognize that the Privacy Act does not prohibit disclosure of SSI eligibility records relating to individuals who are now deceased. *See* 20 C.F.R. § 401.25 (when used in connection with the Privacy Act and the rules governing program information, the term "individual" means a living person); 65 Fed. Reg. 82482 (stating that "as a general rule, under the Privacy Act, privacy rights are

extinguished at death"); *Crompton v. United States*, 843 F. Supp. 751, 756 (D.D.C. 1994), *aff'd sub nom.*, *Crompton v. Stone*, 59 F.3d 1400 (D.C. Cir. 1995) (noting that the Privacy Act does not apply to the release of information concerning a deceased person).

For the foregoing reasons, we request expedited release of the records requested in the accompanying letter.

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